been tried by the original tribunal, for instance, under Section 83 of the Bankruptcy Ordinance, 1888.

In fine, I hold that under Section 18 (2) of Ordinance No. 99 (Medical Registration) an appeal lies from the decision of the Medical Council, not to the Court of Appeal, but to the Supreme Court, and in my opinion the Court of Appeal should decline to exercise jurisdiction in the present proceeding.

Solicitors for Appellant—*Braddell Bros.*

Solicitors for Respondents—*John G. Campbell & Co.*

[ORIGINAL CIVIL JURISDICTION]

MILLS, J.

May 19 and July 18, 1933.

RE SASSOON EZEKIEL

[SINGAPORE BANKRUPTCY No. 678 of 1931]

Order for payment of costs "by the Official Assignee of the property of Sassoon Ezekiel, a bankrupt"—Judgment Summons issued against Official Assignee on non-payment—Right of creditor to issue such summons—Right of Assistant Official Assignee to appear in Court as representing the Official Assignee.

When a party who is a stranger in bankruptcy proceedings has obtained an order for costs against the Official Assignee of the property of a named bankrupt and the Official Assignee makes default in payment, the party is not entitled in such proceedings to summon the Official Assignee under S. 658 of the Civil Procedure Code.

An Assistant Official Assignee has a right under Bankruptcy Rule 269 to appear and be heard as the agent of the Official Assignee in all proceedings in Court and not merely in all Bankruptcy proceedings in Court.

Judgment Debtor Summons.

In this case the Official Assignee on the 29th March, 1932, moved the Court to declare void and or to set aside certain transactions. On the 24th January, 1933, the Court made the following order on the Motion namely:—"That the said Motion be refused with costs to be taxed and paid by the Official Assignee of the property of the said Sassoon Ezekiel, a bankrupt."

The 1st Respondent, Rachael Sassoon taxed her costs under the said Order. These were certified by the Registrar on the 27th April, 1933, at the sum of $593.04 which amount was subsequently reduced to $446.44 by a set-off for reasons not material for the purpose of this report.

The Official Assignee did not pay such costs and thereupon the 1st Respondent caused a a Judgment Debtor Summons to be issued under Section 658 of the Civil Procedure Code to examine him orally respecting his ability to pay.

The Judgment Debtor Summons came on for hearing on the 16th May, 1933, when the Assistant Official Assignee appeared on behalf of the Official Assignee. A preliminary objection was at once taken by Counsel for the said 1st Respondent that the Official Assignee must attend in person to be orally examined and that on a Judgment Summons he could not be represented by an Assistant Official Assignee. Arguments took place on this contention.

Seth for Judgment Creditor.

Rule 269 is only limited to proceedings in Bankruptcy and does not confer upon an Assistant Official Assignee a right of audience in Court on an application which is not made to the Court in its bankruptcy jurisdiction.

If a judgment debtor can be legally represented on the hearing of a judgment debtor summons only an advocate and solicitor of this Court can appear on his behalf.

Asst. Official Assignee for Official Assignee.

Cur. Ad. Vult.

The Judge delivered the following written Judgment on the preliminary objection.

MILLS, J.—The judgment-creditor, acting under Section 658 of the Civil Procedure Code, has summoned the judgment-debtor, who is the Official Assignee, to be orally examined before the Court.

The Assistant Official Assignee claims the right to be heard on behalf of the Official Assignee in order that he may put forward reasons why the Official Assignee is under no legal obligation to obey the summons.

The Assistant Official Assignee bases his claim to audience on Rule 269 of the Bankruptcy Rules, which says that an Assistant Official Assignee may represent the Official Assignee in all proceedings in Court.

Contra, the advocate and solicitor of the judgment-creditor urges that Rule 269 applies only to Bankruptcy proceedings, and that as the present proceedings are not Bankruptcy proceedings, the judgment-debtor, by virtue of section 100 of Ordinance No. 101 (Courts), may be represented only by an advocate and solicitor of the Supreme Court.

I hold that the expression "all proceedings in Court" in Rule 269 of the Bankruptcy Rules means "all proceedings in Court," and is not to be interpreted to mean "all Bankruptcy proceedings in Court."

I hold that an Assistant Official Assignee is authorised by Rule 269 of the Bankruptcy Rules to appear as agent of the Official Assignee in all matters in which, under the general rule of law, a principal may appoint an agent to act for him.

I do not decide that an Assistant Official Assignee is authorised by Rule 269 of the Bankruptcy Rules to appear as agent of the Official Assignee in matters in which, under the general rule of law, a principal may not appoint an agent to act for him: on that point I should require to hear further argument, and I give no decision upon it.

In the present instance, the position of the judgment-debtor is, to use the words of Deane, J. in the case of *Mundell* v. *Mellor*, [(1929) S.S. L.R. at p. 161] "rather in the nature of the position of a defendant"; following the decision of Deane, J., I hold that the judgment-debtor has a right to be heard, and that, under Rule 269 of the Bankruptcy Rules, the Assistant Official Assignee has a right to be heard as his agent.

It follows that the Court is under an obligation to hear the Assistant Official Assignee, and therefore I will hear him.

The hearing of the Judgment Summons then proceeded on the 19th and 28th June and 8th July.

Asst. Official Assignee for Official Assignee.

Seth for Judgment Creditor.

The order to pay costs is enforceable as a judgment—Rule 69 of the Bankruptcy Rules. The relation of judgment creditor and judgment debtor is established as between 1st Respondent and the Official Assignee.

The order is an order of the Court exercising jurisdiction in Bankruptcy. The Supreme Court is the Court having jurisdiction in bankruptcy, S. 86 (1) of Ordinance 44 (Bankruptcy).

The judgment debtor summons is not a proceeding in bankruptcy. It is a process to ascertain what means the judgment debtor has to satisfy the judgment. It is discovery in aid of execution. S. 5 (c) (ii) of the Civil Procedure Code and Rule 289 of the Bankruptcy Rules exclude the application of the provisions of the Civil Procedure Code in matters of practice and procedure in Bankruptcy. The judgment debtor summons does not come within the operation of either the section or the rule relied upon by the Assistant Official Assignee.

Assistant Official Assignee in reply.

Cur. Ad. Vult.

MILLS, J.—By a motion dated the 29th March, 1932, in this Bankruptcy the Official Assignee moved the Court to declare void and/or set aside certain transactions, the nature of which is not now material.

On the 24th January, 1933, the Court made the following order "This Court did order.... that the said motion be refused with costs to be taxed and paid by the Official Assignee of the property of the said Sassoon Ezekiel a Bankrupt to the 1st Respondent and the 2nd Respondent respectively."

As the Official Assignee did not pay the costs, the 1st Respondent, Rachael Sassoon Ezekiel, on the 25th May, 1933, summoned the Official Assignee, under Section 658 of the Civil Procedure Code, to be orally examined before the Court respecting his ability to pay or satisfy the claim in respect of those costs.

The Official Assignee, through his agent, objected that the 1st Respondent was not entitled to summon the Official Assignee under Section 658 of the Civil Procedure Code.

The question for immediate decision is whether or not the 1st Respondent is entitled so to summon the Official Assignee.

A judgment debtor summons is not an originating process: it may be issued only in a pending cause or matter.

The only pending cause or matter in which this summons could possibly be issued was "*Re* Sassoon Ezekiel, *Ex parte* Seah Hock Lee. In Bankruptcy No. 678 of 1931." The judgment debtor summons, from its title, purports to be issued in this Bankruptcy, and I hold that it was so issued.

The question is, then, Whether the 1st Respondent is entitled, in Bankruptcy proceedings, to summon the Official Assignee under Section 658 of the Civil Procedure Code.

In my opinion, she is not so entitled; since it is provided in Section 5 of the Civil Procedure Code that nothing in the Code shall affect the statutory practice and procedure of the Court in causes or matters in Bankruptcy, and Rule 289 of the Bankruptcy Rules enacts in effect that the Civil Procedure Code shall not apply to any proceedings in bankruptcy.

Summons Dismissed.

Solicitors for the Judgment Creditor—
Sisson & Delay.

Official Assignee in person.

F. M. S.

[PRIVY COUNCIL]

LORD TOMLIN, LORD THANKERTON,

SIR LANCELOT SANDERSON.

December 15, 1932.

THE PAHANG CONSOLIDATED COMPANY, LTD.....Appellants.

vs.

THE STATE OF PAHANG.....Respondent.

[KUALA LIPIS CIVIL SUIT No. 8 of 1931.

PAHANG CIVIL APPEAL No. 1 of 1931.

PRIVY COUNCIL APPEAL No. 27 of 1932.]

Tin and Tin-ore (Restriction) Enactment No. 23 of 1931, Sections 2 and 5, rules 2 and 34 —Power of Chief Secretary to make rules— Constitutional Law of Pahang—Powers of Sultan of Pahang.

On the 8th December, 1898 the British Resident in Pahang on behalf of the Sultan of Pahang by a lease executed on that date granted to the Pahang Corporation, of which Company the Appellants were the assigns, full mining rights in certain lands in Pahang described in the second schedule thereto. As assigns of the Pahang Corporation, the appellants were entitled to the benefit of the said lease. In February, 1931 the principal tin producing countries of the world, including the Federated Malay States, entered into an agreement to secure a fair and reasonable equilibrium between production and consumption with the object of preventing rapid fluctuations in the price of tin. In pursuance of this International Agreement the "Tin and Tin-Ore (Restriction) Enactment No. 23 of 1931" was passed on the 26th April, 1931 by the Federal Council and assented to by the Rulers of the Federated Malay States. By section 2 (i) of this Enactment the Chief Secretary to Government was empowered to make rules for restricting the production and export of tin. By virtue of these rules quotas were allowed to all tin producers including the appellants, restricting the right to produce and export tin to the amount set forth in the quotas. Before the passing of Enactment No. 23 of 1931, the appellants applied to Government for exemption from the provisions of the proposed legislation. Upon refusal by Government of the application, the appellants brought an action against the respondent by which they claimed to be exempted from any legislation restricting the amount and/or export of tin from their mines and, if they were not so exempted, to recover damages from the State of Pahang, in that the State had committed a breach of the lessor's covenants in the Lease. The trial Judge, Elphinstone, C.J. dismissed the appellants' claim. On appeal, the Court of Appeal (Prichard, J., Burton, J. and Mudie, J.) affirmed the decision of Elphinstone, C.J., Mudie, J. partially dissenting. The Appellants then appealed to the Privy Council.

Held, on appeal to the Privy Council, that Enactment No. 23 of 1931 overrides any special rights claimed by the appellants to have been conferred upon them by the Lease of 1898, and that there is sufficient indication on the face of the Enactment of an intention that the rules to be made thereunder should be wide enough to apply to every case.

Held further, that the suit against one of the Federated Malay States in respect of a matter or thing arising under or resulting from the operation of the Enactment or the Rules made thereunder is barred by Section 5 of that Enactment.

The findings of the trial Judge and of the Court of Appeal, except as to that part of the decision of Mudie on question of exemption from mining regulations, upheld.

AN APPEAL to His Majesty in Council from a judgment of the Federated Malay States Court of Appeal, which is reported in (1932) F.M.S.L.R. 131.

Wilfred Green, K.C. and the *Hon'ble Cyril Asquith* for the Appellants.

Hon'ble Sir Stafford Cripps, K.C., and *C. Stafford Crossman* for the Respondents.

Cur. Ad. Vult.

The Judgment of their Lordships (Lord Tomlin, Lord Thankerton and Sir Lancelot Sanderson) was delivered by—

LORD TOMLIN.—The appellants are a mining company incorporated in England under the English Companies Acts. As assigns of the original lessees who were the Pahang Corporation the appellants are entitled to the benefit of a lease of a large tin mine in Pahang, granted on the 8th December, 1898, by the British Resident in Pahang on behalf of His Highness the Sultan of Pahang.

The respondent is the State of Pahang which is one of the four Federated Malay States.

The appellants seek in the action out of which this appeal arises to have it declared that a certain enactment of the Federated Malay States passed in the spring of 1931, limiting the production and export of tin in and from the Federated Malay States, has no application to their mine, or, if it has, to recover damages from the State on the ground that the State in concurring in passing the enactment in question committed a breach of the lessors' covenants in the lease.

The appellants have failed in the Court of first instance and in the Court of Appeal, though in the Court of Appeal one judge dissented in part from his colleagues and would have given the appellants some relief.

The appellants now appeal to His Majesty in Council.

The constitutional position in Pahang so far as it is material to the matters under consideration in this Appeal may be summarised thus:—

(1) The Sultan of Pahang is an absolute ruler in whom resides all legislative and executive power, subject only to the limitations which he has from time to time imposed upon himself in the circumstances hereinafter mentioned.

(2) In 1888 he agreed to administer his country with the advice of a British Resident.

(3) In 1889 he appointed and there has since existed a State Council, but this is only an advisory body, and though since 1889 laws for the State have been enacted by the Sultan in Council, the legislative power has remained in the Sultan acting with the advice of the British Resident.

(4) In 1895 the Federation of the Malay States was first formed by Treaty between the States, but that Treaty did not curtail any of the powers of this Ruler of the State of Pahang within his State.

(5) By an agreement made in 1909 a Federal Council was constituted, of which the Sultan of Pahang was a member, and it was agreed that laws passed or to be passed by the State Councils should continue to have full force and effect in the States, except in so far as they might be repugnant to any law passed by the Federal Council, and that nothing in the agreement was intended to curtail any of the powers or authority held by any of the Rulers in their respective States.

(6) By a further agreement in 1927 the Federal Council was reconstructed in such manner that *(inter alia)* the Sultan of Pahang himself no longer sat on it, but was represented by the British Resident of Pahang, and it was provided (*a*) that the Federal Council should pass all laws intended to have force throughout the Federation; (*b*) that laws passed by such Council should be enacted in the following words: "It is hereby enacted by the Rulers of the Federated Malay States by and with the advice and consent of the Federal Council" and should be signed by each of the Rulers before coming into force; (*c*) that any law passed or which might thereafter be passed by a State Council should continue to have full force and effect in such State except in so far as it might be repugnant to the provisions of any law passed by the Federal Council; and (*d*) that nothing in the agreement was intended to curtail any of the powers or authority held by any of the Rulers in their respective States.

The lease of 1898, granted by the British Resident on behalf of the Sultan of Pahang, contained in substance the following provisions:—

(1) It provided for the demise to the Pahang Corporation their "successors and assigns" for a term of 77 years from the 1st September, 1891, of "full mining rights" in the area covered by the Lease, together with "full and free liberty" for the Corporation to win work and obtain from the area all the tin and other minerals therein contained and for the payment to the Treasurer of Pahang of royalties upon tin and minerals so obtained and exported from the State.

(2) The Corporation its successors and assigns were to be "exempted from payment of all duties taxes and tolls now or hereafter to become payable in the State of Pahang" with certain named exceptions.

(3) The Corporation its successors and assigns were to be "subject to the Mining Regulations and Laws from time to time in force in the State of Pahang in all matters not otherwise provided for by this Lease."

(4) The Corporation performing its covenants was to have quiet enjoyment of the premises demised during the term without any lawful interruption from or by the Sultan or any person lawfully claiming under him.

(5) The Corporation was to be entitled to assign the subject matter of the Lease to a Company or Companies formed or to be formed in Great Britain..... "subject to the approval of the Rt. Hon. The Secretary of State."

The mine comprised in the lease differs from other tin mines in Pahang in that it is not a dredge mine, but one worked by deep shafts and extensive underground workings. Constant pumping of large volumes of water is necessary to keep the mine free of water. These conditions entail heavy overhead charges which necessarily remain constant even when production is reduced. An extensive system of railways and waterways has also to be kept in order and constitute another constant item of overhead charge. In these circumstances, any limitation of production may prove serious to those working the mine.

On the 27th February, 1931, an international agreement was entered into between the tin-producing countries of the world, including the Federated Malay States, for limiting the production and export of tin from the countries of contracting parties.

In order to give effect to the obligations of the Federated Malay States under this agreement the ordinance now complained of was passed by the Federal Council, was signed by the Rulers of the Federated States, including the Sultan of Pahang and became operative on the 26th April, 1931.

Before, however, the enactment came into force, the appellants, on the 30th March, 1931, launched their action in a *quia timet* form, asking in effect to have it declared that they could not be affected by legislation limiting output and export or either of them and that if they were so affected the State would be liable in damages. The plaint was amended after the enactment became

operative in order to deal with the situation thereby created.

The enactment contained a preamble to the effect that an international agreement had been arrived at between the Governments of the principal tin-producing countries of the world, that it was desirable that the production and export of tin should be subjected for a period to control in order that an economic balance between production and consumption should be restored; that the Federated Malay States was a party to this agreement, that a scheme had been agreed to by the parties aforesaid to give effect to this policy of control and that it was necessary for the implementing of this agreement and scheme that legislative sanction and authority should be given.

The operative part of the enactment was in the following terms:—

> "1. This Enactment may be cited as 'The Tin and Tin-ore (Restriction) Enactment, 1931,' and shall be deemed to have commenced and come into operation upon the 1st day of March, 1931, and shall remain in force until the Chief Secretary to Government shall by notification in the *Gazette* order that the same do cease to be in force.
>
> "2. (i) The Chief Secretary to Government, Federated Malay States, may from time to time make rules for any of the following purposes:—
>
> (*a*) to restrict and regulate the production, possession, sale, purchase and export of tin and tin-ore;
>
> (*b*) to provide for the appointment of officers and other persons to carry out the provisions of any rules and to prescribe their duties;
>
> (*c*) to prescribe fees to be charged for anything to be done under any rules;
>
> (*d*) to prescribe the penalty with which the contravention of any rule made under this Enactment shall be punishable.
>
> "(ii) All such rules shall be published in the *Gazette* and shall thereupon have the force of law.
>
> "(iii) All such rules shall be laid before the Federal Council at the first meeting after such publication and may be amended or disallowed by resolution of the said Council.
>
> "(iv) Any rules so amended shall come into force as amended from the date of the passing of such resolution and any rule disallowed shall cease to have any force or effect from the date of such resolution.
>
> "3. Nothing in this Enactment or in any rules made thereunder shall affect the provisions of 'The Mineral Ores Enactment, 1923,' and all rules made under this Enactment shall be additional and auxiliary to the provisions of the said Mineral Ores Enactment and any rules made thereunder.
>
> "4. No decision made in exercise of the powers conferred by this Enactment of any officer or other person appointed under this Enactment regarding the quantity of tin or tin-ore which may be produced, sold, purchased, exported, or be in the possession of any person shall be called in question in any Court of Law.
>
> "5. No suit shall be instituted in any Court against the Chief Secretary to Government or against the Government of the Federated Malay States or of any of them or against any public officer in respect of any matter or thing arising under or resulting from the operation of this Enactment or the Rules made thereunder."

In August, 1931, the Chief Secretary made rules under the enactment.

By these rules substantial restrictions were imposed upon the production and export of tin and tin-ore in and from the Federated Malay States.

Rule 39 of these rules was as follows:—

> "The provisions of these rules shall apply in respect of all mining lands in the Federated Malay States held under lease or mining certificate notwithstanding any particular conditions, terms or covenants contained therein."

The appellants' case is put in two ways. *First* it is said that the enactment and the rules thereunder do not apply to the appellants' mine at all and *Secondly* it is said that if the enactment and rules do apply there has been a breach of the lessors' obligations for which damages can be recovered from the State.

The appellants support their first ground of appeal by saying that the lease contains three specialties, namely:—

(1) There is an express grant of "full mining rights."

(2) The mine is expressed to be subject to the mining Regulations and laws of the State in all matters not otherwise provided for by the lease and production is provided for by the express grant of full mining rights; and

(3) There is a covenant for quiet enjoyment.

These specialties, they say, are not affected by the enactment in question because such enactment must be construed with reference to two principles, that is to say: (1) the principle indicated by Lord Blackburn in *Garnett* v. *Bradley*, 3 A.C. 944 at page 967, in the following words: "There is another rule which has been laid down, which I think is a good rule if it is properly applied, namely, that where there has been a particular rule established either by custom or by statute, where there is some particular law standing and a subsequent enactment has general words which would repeal that particular law or particular custom if they were taken in all their generality, yet nevertheless the first particular law is not to be repealed unless there is a sufficient indication of intention to repeal it," and (2) the principle embodied in the maxim "*generalia specialibus non derogant.*"

Further, they say if this be the true construction of the enactment, the rules purporting to impinge on the appellants' rights under the lease are *ultra vires* and void.

It is unnecessary to consider what is the distinction if any between the two principles invoked in the terms in which they have been stated. It is enough to say, that whether there be two principles or one principle they or it must yield to a sufficient indication of intention to override the pre-existing specialty.

Their Lordships are satisfied that in the present case there is ample indication on the face of the enactment of an intention that the rules to be made under it should be wide enough to apply to every case, indeed, it was essential to the very purpose of the enactment that this should be so. In the circumstances their Lordships are of opinion that the scope of the enactment is such that the rules under it are *intra vires* and wide enough to cover the appellants.

The second ground of appeal under which the appellants seek if the enactment and rules are held to apply to them to recover damages from the State is rendered difficult by another consideration.

It is admitted that an action for breach of covenant can be maintained against the respondent, but it is said by the respondent that the action which the appellants contemplate is expressly prohibited by Section 5 of the enactment.

In their Lordships' opinion such an action would, within the meaning of Section 5, be a suit against one of the Federated Malay States in respect of a matter or thing arising under or resulting from the operation of the Enactment or the Rules made thereunder and could not therefore be maintained.

Having regard to the views which their Lordships entertain and have expressed as to the meaning and effect of the enactment and the rules made thereunder, it is unnecessary to consider how far the appellants' contention as to the effect of the lease are well founded and their Lordships must not be taken to express any opinion in relation thereto.

In the result, therefore, this Appeal, in their Lordships' opinion, fails and must be dismissed and their Lordships will humbly advise His Majesty accordingly.

The costs of the Appeal must be paid by the appellants.

Appeal dismissed.

Solicitors for the Appellants—*Pooley & Co.*, Kuala Lumpur, for *Drew & Napier*, Singapore; *Linklaters Pains*, London.

Solicitors for the Respondent—*The Hon'ble Mr. W. S. Gibson, Legal Adviser*, Federated Malay States; *Burchells*, London.

[APPELLATE CIVIL JURISDICTION]

TERRELL, Ag. C.J., WHITLEY & McFALL, JJ.

April 20, 1933.

LAU YAU WENG
LAU YAU CHI .....**Appellants**

vs.

THE BANK OF MALAYA, LTD....Respondents

[PERAK CIVIL APPEAL No. 1 of 1933]

Notice to chargor — Service — Land Code, 1926, section 138—Waiver of irregularities in form of notice by voluntary appearance of chargor.

On the 24th February 1931, land was transferred to the appellants subject to a charge in favour of the respondents. Default in payment was made and, on the 19th September, 1932, a notice under section 138 of the Land Code, 1926, which was not in the proper form, was served on the first appellant. This notice was sent by registered post to the second appellant, returned undelivered and a copy posted on the land under the provisions of section 138 (v).

On the 16th January, 1933, at the hearing of the summons under section 149, the first appellant appeared in person and the second defendant by his attorney. On this date the power of attorney had not been registered in the Federated Malay States but any objection to this was waived by the chargees.

The order for sale made on the summons was not perfected until the 21st February, 1933, and on this date the first and second appellants appeared by their solicitor to settle the form of the order. In the meantime, on the 7th February, 1933, the power of attorney was duly registered in the Federated Malay States.

On the 9th February, 1933, the first appellant and the second appellant, by his attorney, gave notice of appeal. The memorandum of appeal set out the following grounds:—

(1) That the notice served on the 19th September, 1932, was not a proper notice under section 138 of the Land Code;
(2) that the notice was not properly served on the second appellant; and
(3) that the Summons in Chambers was not properly served on the second appellant, as the power of attorney had not been registered.

Held, that before service can be effected under Section 138 (v) of the Land Code, 1926, a chargee must adduce evidence that all the methods of service prescribed in sub-sections 138 (i), (iii) and (iv) had failed or were not open to him.

Held, that the first appellant by appearing in person at the hearing of the Summons in Chambers and not objecting to the form of the notice had waived this irregularity.

Held, (by Terrell, Ag. C.J., and Whitley, J. and McFall, J., dissenting) that the second appellant by registering his power of attorney on the 7th February, 1933, and voluntarily appearing, by Counsel, on the 21st February, 1933, to settle the terms of the order on the summons, had waived any irregularities, and the order made on the summons could not be questioned by him on appeal.

Decision of Gerahty, J., affirmed.

Supramanian Chetty v. *Mohamed Ibrahim*, 3 F.M.S. L.R. 91, followed.

K. M. Coomarasamy for the appellants.

G. Terrell for the respondents.

Cur. Ad. Vult.